IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

J U D G M E N T

S.B. Civil Second Appeal No. 242 of 2000

Bhanwar Lal & Another
VERSUS
Moorti Mandir Shri Raghu Nath Ji Bada Mandir, Laxmangarh

Date of Order ::: 07.02.2006

Hon'ble Mr. Justice Narendra Kumar Jain

Mr. G.S. Bapna, for defendant appellants
Mr. Mahendra Goyal, for plaintiff respondent

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By the Court :::

Heard learned counsel for the parties.

Plaintiff respondent instituted a civil suit for eviction in respect of rented premises on the ground of personal bonafide necessity as well as nuisance and other grounds also. However, the Lower Court decreed the suit of the plaintiff on the ground of personal bonafide

necessity as well as nuisance. The First Appellate court has upheld the judgment of the Lower Court. Hence this second appeal by defendant appellants.

Learned counsel for the defendant appellants contended that the rented premises was let out on 01.01.1988 and the suit was filed on 21.03.1991, whereas in view of Sub section 3 of Section 14 of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (for short the “Act of 1950) the suit for eviction of the premises let out for commercial or business purposes, could not have been filed against the tenant on the ground of personal bonafide necessity before expiry of five years from the date, the premises were let out to the tenant, therefore, both the Courts below have committed an illegality in not considering the mandatory provisions of Section 14 (3) of the Act 1950.

Learned counsel for the plaintiff respondent contended that the suit was filed on 21.03.1991 and the written statement was filed on 30.07.1991, but no such plea about sub Section 3 of Section 14 of the Act was taken in it. He further contended that the suit remained pending in the Lower Court till passing of the judgment and decree dated 23.03.1998 i.e. for about eight years but the written

statement was not amended incorporating such objection and even during the course of arguments, this point was not argued by the plaintiff before the Lower Court, therefore, the plaintiff waived his right and he could not have been allowed to raise such plea before the First Appellate Court and even before this Court in this regard.

Although, the First Appellate Court considered this objection of the plaintiff without any pleading and issue, but observed that from the rent note, it does not appear that the premises were let out for commercial purposes and as such provisions of Section 14 (3) of the Act 1950 are not attracted in the present case. It was further observed that now the period of five years has expired long back, therefore, the decree for eviction cannot be refused on this ground.

This Court in Jagdish Vs. Manoj Kumar Sharma, **2004 (1) WLC (RAJ) 685,** Kahtoon Begum (Deceased) through her LRs & two Another Vs. Bhagwan Das & Others, **2004 (1) WLC (RAJ) 761** and Ashok Gupta & Another Vs. Ghisi Lal Barарya, **2004 (1) WLC (RAJ) 734** considered the issue relating to waiver in respect of Sub Section 3 of Section 14 of the Act of 1950. The judgment of this Court in **Ashok Gupta & Another Vs. Ghisi Lal Barарya** (supra) has been

upheld by the Hon'ble Supreme Court in Special Leave to Appeal (Civil) No. 5577 of 2004 vide order dated 02.04.2004. The judgments of this Court as referred above have considered number of judgments of the Hon'ble Supreme Court including the judgments given in Martin & Harris Limited Vs. Vith Additional District Judge & Others, **JT 1997 (10) S.C. 34,** wherein the provisions of Section 21 of the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972 were considered. The Hon'ble Supreme Court considered the principle of waiver in para no. 16 to 20 of its judgment. The Apex Court observed that the provision obviously was enacted for the benefit and protection of the tenant, but it is for the tenant to insist on it or to waive it. This type of protection to the tenant is personal to him and could be waived. The Apex Court in the facts and circumstances of that case held that the tenant had waived that contention about suit being premature.

So far as the present case is concerned, learned counsel for the defendant appellants does not dispute that no such plea as required under Section 14 (3) of the Act 1950 was taken in the written statements and no issue in this regard was framed. The suit remained pending in the Lower Court for about eight years, therefore, I find that

the contention of learned counsel for the defendant appellants is fully covered by three decisions of this Court based on the judgments of the Supreme Court and as such I do not find any force in the contention of the learned counsel for the defendant appellants in this regard.

Both the Courts below have recorded a finding of fact in respect of personal bonafide necessity in favour of the plaintiff respondent. The question of personal bonafide necessity is a pure question of fact and no interference is called for in this second appeal.

Apart from above, both the Courts below have also decreed the suit of the plaintiff respondent on the ground of nuisance and there is concurrent finding of fact in this regard also, and no illegality or perversity has been pointed out in the said finding relating to the nuisance and decided in favour of the plaintiff respondent. No substantial question of law is involved in this second appeal. Hence, the same is dismissed at the admission stage itself with no order as to costs.

(Narendra Kumar Jain) J.

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